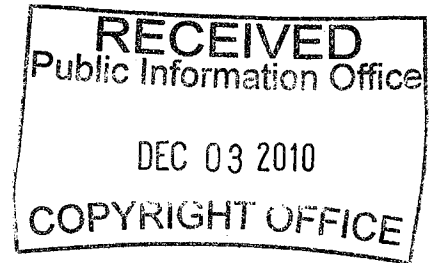


Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.



_____)
In the Matter of)

_____)
Refunds Under the Cable)
Statutory License)
_____)

Docket No. RM 2010-3

REPLY COMMENTS OF PROGRAM SUPPLIERS

The Motion Picture Association of America, Inc. ("MPAA"), its member companies and other producers and/or syndicators of syndicated movies, series, and specials broadcast by television stations ("Program Suppliers"), hereby submit Reply Comments on the Notice of Proposed Rulemaking ("NPRM") regarding the appropriate treatment for requests by some cable systems for issuance of refunds under the cable statutory license, published by the Copyright Office ("Office"). *See* 75 Fed. Reg. 61116 (October 4, 2010) and 75 Fed. Reg. 62488 (October 12, 2010) (correction).

First, as Program Suppliers commented, the Office's existing regulations bar cable operators from initiating a request for a refund or an offset more than 60 days after the last day for filing a Statement of Account ("SOA") for a particular account period, or more than 60 days after the Office's receipt of a royalty payment. *See* 37 C.F.R. § 201.17(m)(3)(i) (stating the Office's 60 Day Rule); *see also* PS Comments at 3-5. Program Suppliers urge the Office to continue to enforce this rule.

Second, the Office's proposed Amendment to Section 201.17(m) of its regulations is unnecessary and should not be adopted. In the NPRM, the Office proposes to amend Section 201.17(m) of its regulations to add a new subsection. *See* 75 Fed. Reg. at 61118 (quoting the Office's proposed language for new Section 201.17(m)(1) of its regulations). Program Suppliers see no reason for new regulation regarding phantom signals and, therefore, urge the Office to refrain from adopting the proposed regulation.

Third, after consulting with each other, both the National Cable & Telecommunications Association ("NCTA") and Program Suppliers agree that Section 201.17(m) should be modified to permit a cable system to seek a refund when the Office initiates an inquiry regarding a filing outside of the 60-day refund request period. The parties propose the following modifications to Sections 201.17(m):

(m) Corrections, supplemental payments, and refunds.

(1) Upon compliance with the procedures and within the time limits set forth in paragraph (m)(3) of this section, corrections to Statements of Account that are either initiated by a cable operator or responsive to an inquiry by the Licensing Division will be placed on record, supplemental royalty fee payments will be received for deposit, or refunds will be issued, in the following cases:

(i) Where, with respect to the accounting period covered by a Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete and such correction or completion does not change the royalty fee;
or

(ii) Where, ~~for any reason except that mentioned in paragraph (m)(1)(iii) of this section,~~ calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low; or

~~(iii) Where, for the semiannual accounting period of January 1, 1978, through June 30, 1978, the total royalty fee deposited was incorrect because the cable operator failed to compute royalties attributable to carriage of late night, specialty, or part-time programming between January 1, 1978, and February 9, 1978. in response to an inquiry by the Licensing Division, the cable operator submits a recalculation showing the royalty fee payable for the accounting period that is the subject of the inquiry was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.~~

(2) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a distant signal) took place later.

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the cases mentioned in paragraph (m)(1) of this section. Such requests shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must clearly identify its purpose, and, solely in the case of a request for a refund filed under paragraph (m)(1)(ii) of this section, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period, or before the expiration of 60 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer. A request filed under paragraph (m)(1)(ii) of this section made by telephone or by telegraphic or similar unsigned communication, will be considered to meet the this requirements of this paragraph (m)(3)(i) if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 60-day period, and if a written request meeting all the conditions of this paragraph (m)(3) is also received in the Copyright Office within 14 days after the end of such 60-day period;

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request (by inclusion of the name of the owner of the cable system, the community or communities

served, and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

(A) In the case of a request filed under paragraph (m)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the erroneous or incomplete information and provide the correct or additional information;

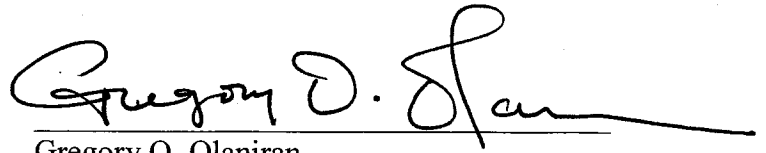
(B) In the case of a request filed under paragraph (m)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of title 28 of the United States Code, made and signed in accordance with paragraph (e)(14) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations;

(C) In the case of a request filed under paragraph (m)(1)(iii) of this section, the request shall be identified as “Response to Licensing Division Inquiry~~Transitional and Supplemental Royalty Fee Payment~~” and include a detailed analysis of the proper royalty calculations;

CONCLUSION

For all of the foregoing reasons, Program Suppliers respectfully request that the Office adopt the regulatory language proposed herein and refrain from allowing refunds or offsets that are untimely, except as permitted by the Office’s regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory O. Olaniran", written over a horizontal line.

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Dated: December 3, 2010